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Bremaiing in Vogue: The Impact of Brexit on the Fashion Industry

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BREMAINING IN VOGUE: THE IMPACT OF BREXIT ON THE FASHION INDUSTRY

BY: NATALIE CUADROS*

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I. INTRODUCTION

In the United Kingdom, fashion has evolved into a central pillar of British culture. Over time the British fashion industry has emerged as a global force, hosting the thirty-second anniversary of London Fashion Week,¹ and directly contributing £28.1 billion to the United Kingdom's gross domestic product ("GDP") in 2015 alone.² Notwithstanding stiff competition from countries such as France, Spain, Italy, and the United States, the United Kingdom has nevertheless established itself as a fashion powerhouse.³ Notably, British fashion designers and retailers recently started working exclusively with British manufacturers.⁴ In fact, brands such as Topman, headquartered in London, have experienced "positive consumer response" to products that unambiguously display a "Made in England" designation.⁵ As such, the British Fashion industry has increased efforts to maintain its national identity

1. See *History of the BFC*, BRITISH FASHION COUNCIL, <http://www.britishfashioncouncil.com/About/History> (last visited Sept. 30, 2017) (explaining the origins of the British Fashion Council and the advent of London Fashion Week).

2. See *The Economic Value of the United Kingdom's Fashion Industry in 2015*, BRITISH FASHION COUNCIL 6 (May 2016) [hereinafter *Economic Value of the U.K.'s Fashion Industry*], http://www.britishfashioncouncil.com/uploads/files/1/J2089%20Economic%20Value%20Report_V04.pdf (introducing the British Fashion Council report on the significance of the fashion industry as compared to other industries in the United Kingdom).

3. See Rachel Dicker, *10 Most Fashionable Countries*, U.S. NEWS (Sept. 22, 2016, 2:56 PM), <https://www.usnews.com/news/best-countries/articles/2016-09-22/10-most-fashionable-countries> (ranking Italy, France, Spain, the United States, and the United Kingdom as the top five most fashionable countries in the world based on global survey data).

4. See Karen Kay, *Luxury Brands Feed Demand for Return of UK's Cotton and Knitwear Mills*, GUARDIAN (Oct. 29, 2016, 7:05 PM), <https://www.theguardian.com/fashion/2016/oct/30/fashion-luxury-brands-return-of-uk-cotton-mills> (highlighting designers that are focusing on domestic manufacturers rather than foreign ones); see also *The BFC's 'Future of Fashion'*, FASHION UNITED (Feb. 20, 2012), <https://fashionunited.uk/v1/fashion/the-bfcs-future-of-fashion/2012022011516> (referencing a report by the British Fashion Council that illustrated the benefits of manufacturing solely in the United Kingdom and how consumers prefer a unique identity from fashion retailers).

5. *The BFC's 'Future of Fashion'*, *supra* note 4 ("Over half the designers showing at London Fashion Week make some of their collections in the UK, and some retailers including John Lewis and Topman have championed British-made after positive consumer response.").

embedded in its designs.⁶

In 2016, however, the British populace voted in favor of the United Kingdom's withdrawal from the European Union ("EU").⁷ Prominent members of the fashion industry vehemently opposed⁸ the United Kingdom's withdrawal from the EU, also known as "Brexit,"⁹ citing trade, manufacturing, pricing, and employment concerns.¹⁰ Additionally, the industry is concerned about the fate of intellectual property protection or lack thereof, after Brexit, particularly because a significant amount of the United Kingdom's intellectual property law is enforced through EU directives.¹¹ Moreover, members of the fashion industry generally choose to apply through systems that provide international intellectual property protection rather than strictly national protection.¹² A fashion designer's right to intellectual property in a given work is imperative to the fashion business, and the United Kingdom's post-Brexit intellectual property protection laws will certainly impact the fashion industry as a whole. The United Kingdom's approach to Brexit and its international trade relationship with the EU will likely materially alter the fashion industry in terms of the success and global

6. See *id.* (noting that the connection between designers and retailers is strengthening the industry).

7. See Alex Hunt & Brian Wheeler, *Brexit: All You Need to Know About the UK Leaving the EU*, BBC NEWS, <http://www.bbc.com/news/uk-politics-32810887> (last updated Sept. 26, 2017) (providing background on Britain's withdrawal from the EU).

8. See *The British Fashion Council Announces Survey Results on Brexit*, BRITISH FASHION COUNCIL (June 14, 2016), <http://www.britishfashioncouncil.com/pressreleases/The-British-Fashion-Council-Announces-Survey-Results-on-Brexit> (reporting the results of a survey of United Kingdom designer businesses on their preference to remain or leave the EU).

9. See Tom Moseley, *The Rise of the Word Brexit*, BBC (Dec. 25, 2016), <http://www.bbc.com/news/uk-politics-37896977> (explaining how the term "Brexit" gained popularity and is now included in the Oxford English Dictionary).

10. See Vanessa Friedman, *British Fashion Takes a Stand Against Brexit*, N.Y. TIMES (June 15, 2016), <http://www.nytimes.com/2016/06/16/fashion/brexit-british-fashion-industry-european-union.html> (highlighting the prominent fashion figures that opposed Brexit, such as designer Vivienne Westwood).

11. See *Enforcement of Intellectual Property Rights*, EUROPEAN COMMISSION, http://ec.europa.eu/growth/industry/intellectual-property/enforcement_en (last updated Sept. 30, 2017) (providing a general guide on how directives are applied to member states of the EU in terms of intellectual property); see also Sahira Khwaja et al., *Brexit – Implications for the Fashion and Luxury Brands Industry*, HOGAN LOVELLS (July 25, 2016), <http://ehoganlovells.com/cv/de421f1c78a188e4bd157758ac1bb4b40709f2a9> (explaining how the EU directives will no longer govern the intellectual property laws in the United Kingdom after Brexit).

12. See Holger Gauss et al., *Red Soles Aren't Made for Walking: A Comparative Study of European Fashion Laws*, 5 LANDSLIDE 19, 24 (2013) (explaining how the EU system of registration "has proved to be far more popular" in fashion design than the United Kingdom's registration system).

availability of its products.¹³ The United Kingdom will undoubtedly need to adopt new regulations on imports and exports in the textile and clothing sectors to reflect its separation from the EU market.¹⁴

This Comment focuses on the impact of Brexit on the British fashion industry's tangible and intangible assets, particularly within the realms of intellectual property and trade. First, this Comment describes the rise of the British fashion industry and British fashion in the context of intellectual property and trade under the EU system. Once Brexit achieves fruition, the United Kingdom will be uniquely positioned to implement new legal models in an independent country. This Comment analyzes Switzerland's intellectual property and trade systems against post-Brexit fashion companies Zara and Asos. Finally, this Comment argues that the United Kingdom should adopt aspects of Switzerland's models for intellectual property and trade to bolster the protections afforded to fashion designers and ease the trade relationship with the EU.

II. THE FASHION INDUSTRY'S PLACE IN THE UNITED KINGDOM

In 1983, the British Fashion Council and London Fashion week were created, establishing the United Kingdom as a leading player in international fashion.¹⁵ Brexit could either strengthen or weaken the British fashion industry, depending on the way in which the British government addresses trade, intellectual property, employment, and other industry-related issues.¹⁶ To exemplify Brexit's potential impact on the fashion industry one may look

13. See Ben Chu, *Brexit: True Cost of UK Leaving Without Trade Deal Revealed*, INDEP. (Sept. 23, 2016, 3:31 PM), <http://www.independent.co.uk/news/business/news/br-exit-latest-cost-uk-leaving-eu-without-trade-deal-exports-negotiations-david-davis-a7325326.html> (noting that Brexit could result in tariffs on trade with the EU, which would make British exports, including clothing, "less attractive" to other countries); see also Oscar Williams-Grut, *UK Retailers Are Worried Brexit Could Lead to Empty Shelves*, BUS. INSIDER (Aug. 30, 2017, 2:01 AM), <http://www.businessinsider.com/brc-brexit-border-report-exit-of-customs-union-risks-empty-shelves-2017-8> (noting that the availability of clothing in the United Kingdom could be disrupted by Brexit due to increases in customs declarations and subsequent import delays).

14. See *Alternatives to Membership: Possible Models for the United Kingdom Outside the EU*, HM GOV'T 8 (Mar. 2016) [hereinafter *Alternatives to Membership*], https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/504604/Alternatives_to_membership_-_possible_models_for_the_UK_outside_the_EU.pdf ("The UK now has a special status in the EU We have full voting rights, a full voice at the table and a full say over the rules of the Single Market.").

15. *Economic Value of the U.K.'s Fashion Industry*, *supra* note 2.

16. See Friedman, *supra* note 10 (citing the general concerns and uncertainty of members of the fashion industry following Brexit).

to Asos and Zara, two important companies with ties to the British market.¹⁷ Asos is a British online retailer that manufactures products in the United Kingdom.¹⁸ As a relatively young and exclusively internet-based company, Asos's business model relies on the ability to swiftly operate digitally between countries.¹⁹ Zara, a Spanish-based global retailer, similarly relies on strong IP protections within the United Kingdom to uphold its pre-Brexit business model.²⁰ The fashion conglomerate operates about sixty-eight stores in the United Kingdom and has increased sales growth in recent years, with 2016 sales in the United Kingdom totaling 535.2 million pounds.²¹ Accordingly, Zara's business model requires the ability to import foreign-manufactured goods into the United Kingdom with ease.²²

A. Intellectual Property in British Fashion as Part of the EU: Trademarks

Pre-Brexit, the United Kingdom heavily relied upon its membership in the EU for its trademark and design protection.²³ In the fashion industry, designers and retailers primarily benefit from trademark and design protection procured by a system of intellectual property laws.²⁴ According

17. See Sam Chambers, *Retailer Asos Boosts U.K. Sourcing After Pound's Brexit Fall*, BLOOMBERG (Dec. 12, 2016, 5:03 AM), <https://www.bloomberg.com/news/articles/2016-12-12/retailer-asos-boosts-u-k-sourcing-after-pound-s-brexit-fall> (referencing Asos and Zara considering the impact of Brexit on fashion companies).

18. See *id.* (suggesting that Asos's manufacturing activity in the United Kingdom will increase because the pound's value decreased due to Brexit).

19. See *id.* (noting that about "57 percent of [Asos's] sales are outside the U.K.," and that Asos is distinct from its "domestically focused fashion rivals" because of its international scope of sales).

20. See Suzy Hansen, *How Zara Grew into the World's Largest Fashion Retailer*, N.Y. TIMES (Nov. 9, 2012), <http://www.nytimes.com/2012/11/11/magazine/how-zara-grew-into-the-worlds-largest-fashion-retailer.html> (noting that Zara is a global manufacturer of clothes and reaches countries including Portugal, Morocco, Turkey, China, and Bangladesh).

21. Tara Hounslea, *Zara Continues Assault on UK Market*, DRAPERS (June 21, 2016), <https://www.drapersonline.com/news/zara-continues-assault-on-uk-market/7008521.article> ("Zara has continued to grow its UK market share with sales of its UK subsidiary rising by 8% to £535.2m for the year to January 31 year on year, while gross margin grew by 140 basis points to 56.6%").

22. See Chambers, *supra* note 17 (noting that Zara's reliance on quick turnaround in importing and exporting clothing, and stating that Zara's parent company, Inditex, "gets designs into stores in as little as two weeks by producing 60 percent of its merchandise in Spain, Portugal or Morocco").

23. See Alistair Maughan et al., *Brexit: The UK Clarifies Its Position on Intellectual Property*, MORRISON & FOERSTER 1-3 (Aug. 16, 2016), <https://media2.mofo.com/documents/160816-brexit-intellectual-property.pdf>.

24. See generally Gauss et al., *supra* note 12 (detailing the uses of trademark and

to the World Intellectual Property Organization (“WIPO”), trademark law protects “sign[s] [or logos] capable of distinguishing the goods and services of one enterprise from those of other enterprises.”²⁵ Trademark protection is crucial for successful fashion companies because it is the primary means by which a company protects its brand equity.²⁶ For instance, Burberry, a United Kingdom-based fashion brand, could register a trademark for its distinctive “check pattern.”²⁷ Without such protection, other fashion companies would be able to use the same check pattern to entice consumers to purchase from them, possibly even at a lower price.

Fashion companies that apply for trademarks in the United Kingdom may obtain multiple levels of protection, covering different geographical areas.²⁸ Because designs are typically consumed across the globe, it is common²⁹ for European fashion brands to seek either EU-wide or international trademark protection.³⁰ To protect themselves in EU member countries,³¹ United Kingdom registrants may file a European Union Trade Mark (“EUTM”) through the EU Intellectual Property Office.³² Registrants must file applications online and pay a €850 fee.³³ The EU Intellectual Property

design protection in the fashion industry).

25. *Trademarks*, WIPO, <http://www.wipo.int/trademarks/en/> (last visited Sept. 30, 2017) (defining the term “trademark”).

26. *See IP and Business: Intellectual Property in the Fashion Industry*, WIPO (May 2005) [hereinafter *IP and Business*], http://www.wipo.int/wipo_magazine/en/2005/03/article_0009.html (emphasizing the importance of trademark in the fashion industry to dissuade counterfeiting and establish a brand that is known on an international scale).

27. *See* Phil Wahba, *Burberry Accuses J.C. Penney of Ripping Off its Check Pattern*, FORTUNE (Feb. 9, 2016), <http://fortune.com/2016/02/09/burberry-penney/> (explaining the history of the well-known Burberry check pattern and the many instances of infringement based on similar patterns); *IP and Business*, *supra* note 26 (addressing counterfeiting concerns linked to the need for intellectual property protection).

28. *See generally* Gauss et al., *supra* note 12 (explaining the differences in protection on a United Kingdom-wide level and a EU-wide level).

29. *See id.* (highlighting trademark and design protection as common forms of intellectual property protection, especially in the Italian fashion industry).

30. *See id.* (contrasting the United Kingdom and EU regimes by explaining that only the latter provides designers with a 12-month “grace period” to show that its design has traction and before enforcing the registration fee and only the EU regime protects designers across all EU member states).

31. *See Countries*, EUROPA, https://europa.eu/european-union/about-eu/countries_en (last updated Aug. 9, 2017) (listing member countries of the EU as Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, and the United Kingdom).

32. *Trade Marks in the EU*, EUIPO, <https://euipo.europa.eu/ohimportal/en/trademarks-in-the-european-union> (last updated Feb. 2, 2016).

33. *See id.* (adding that those who successfully register can renew their trademark

Office examines EUTM applications and automatically grants protection in all twenty-eight member countries once the company's registration is approved.³⁴

Once a United Kingdom trademark registrant has filed an application in the United Kingdom or EU, the registrant may then apply for international protection through WIPO.³⁵ WIPO's international trademark protection is facilitated through the Madrid System—a system born out of two treaties: the Madrid Agreement (“Agreement”) of 1891 and the Madrid Protocol relating to the Agreement as implemented in 1989.³⁶ As of 2017, one hundred member entities participate in the Madrid System, and trademarks registered therein may be protected in each participating territory.³⁷ To register through the Madrid Protocol, registrants designate specific member countries it would like to obtain protection in, and each country separately examines an applicant's proposed trademark in accordance with their national trademark laws.³⁸ Registrants may designate multiple countries for trademark protection at any given time, and one country's refusal does not affect the registrants' success in other countries.³⁹ The United Kingdom and the EU are separately designated contracting parties to the Madrid Protocol, meaning that registrants from the United Kingdom do not have to apply using

indefinitely every ten years).

34. See generally *Overseas Trade Mark Protection*, DEHNS, http://www.dehns.com/cms/document/Overseas_Trade_Mark_Protection_EUTM.pdf (last updated Feb. 2017) (providing general information on the EUTM and the Madrid Protocol systems as two options for trademark applicants from the United Kingdom pursuing overseas protection).

35. *How to File Your International Application: Form and Content*, WIPO, http://www.wipo.int/madrid/en/how_to/file/file.html (last visited Oct. 27, 2017) [hereinafter *How to File Your International Application*] (“Once you have applied for or registered a domestic mark with your Office of origin (in other words, once you have obtained a ‘basic mark’), you can file an international application under the Madrid System.”).

36. *Summary of the Madrid Agreement Concerning the International Registration of Marks (1891) and the Protocol Relating to that Agreement (1989)*, WIPO, http://www.wipo.int/treaties/en/registration/madrid/summary_madrid_marks.html (last visited Nov. 12, 2017) (noting that the Protocol aims “to make the Madrid system more flexible and more compatible with the domestic legislation of certain countries or intergovernmental organizations that had not been able to accede to the Agreement”).

37. See *Madrid – The International Trademark System*, WIPO, <http://www.wipo.int/madrid/en/> (last visited Sept. 30, 2017) (including most European countries, the EU itself, the United States, China, Japan, South Korea, India and Australia); see also *Members of the Madrid Union*, WIPO, <http://www.wipo.int/madrid/en/members/> (last visited Oct. 27, 2017) (stating that “[t]he Madrid Union currently has 100 members, covering 116 countries,” meaning that multiple countries may be represented as one solitary member).

38. *Overseas Trade Mark Protection*, *supra* note 34.

39. See *id.*

any EU designations.⁴⁰

B. Intellectual Property in British Fashion as Part of the EU: Designs

Design rights are another form of intellectual property protection for fashion designers.⁴¹ Protectable designs generally consist of ornamental or aesthetic aspects of garments, including shapes, patterns, or color.⁴² In the United Kingdom, design rights are conferred automatically, thereby negating any registration requirements.⁴³ Nonetheless, unregistered design protection only lasts for up to three years, while registered designs remain protected for up to twenty-five years.⁴⁴ As with trademarks, designs may be protected in the United Kingdom, EU-wide, and internationally through specific online registrations.⁴⁵ It is common for fashion companies in the United Kingdom to register for protection through the EU rather than the national system because the companies usually conduct business outside of the United Kingdom.⁴⁶ The registration process through the EU system includes an online application and fee payment, after which a design receives protection in each of the EU member countries for up to twenty-five years.⁴⁷

Registrants may apply for international design protection through WIPO using the Hague System.⁴⁸ The Hague System, established after the Hague Agreement, was created in 1925 to “simplify and streamlin[e] overall

40. See *Protecting Your Trade Mark Abroad*, GOV.UK, <https://www.gov.uk/government/publications/protecting-your-uk-intellectual-property-abroad/protecting-your-trade-mark-abroad> (last updated Sept. 26, 2016) (identifying methods for international intellectual property protection within Europe).

41. *Designs in the EU*, EUIPO, <https://euipo.europa.eu/ohimportal/en/designs-in-the-european-union> (last updated Feb. 19, 2016) (detailing design registration procedures within the various EU intellectual property agencies).

42. See *Design Definition*, EUIPO, <https://euipo.europa.eu/ohimportal/en/design-definition> (last updated July 14, 2015) (providing examples of designs).

43. See *What Is My Automatic Design Right?*, BRITISH LIBR., <https://www.bl.uk/business-and-ip-centre/articles/what-is-my-automatic-design-right> (last visited Sept. 30, 2017) (stating that there is automatic protection for designs that you create which last either ten years after the first sale or fifteen years after the design’s creation, whichever comes first).

44. See *id.*

45. See *Protecting Your Trade Mark Abroad*, *supra* note 40 (providing instructions for online registration).

46. See Gauss et al., *supra* note 12 (asserting that the EU is more popular because of the wider scope of protection it offers).

47. See *id.*

48. See *Summary of the Hague Agreement Concerning the International Registration of Industrial Designs (1925)*, WIPO, http://www.wipo.int/treaties/en/registration/hague/summary_hague.html (last visited Sept. 30, 2017) [hereinafter *Summary of the Hague Agreement*] (explaining the purpose and benefits of the Hague System).

administration of the international design registration system.”⁴⁹ Pre-Brexit, unlike with the Madrid Protocol, registrants from the United Kingdom may only apply for protection through an EU designation because the United Kingdom is not a separate contracting party to the Hague Agreement.⁵⁰ The EU designation itself costs sixty-seven Swiss francs per design, together with the basic registration fee, which starts at 387 Swiss francs.⁵¹ British designers typically do not register through the Hague System, with only an average of thirty applications filed annually in recent years as opposed Germany filing around an average of 3,600 applications annually in those years.⁵²

C. The Current Trade Regime in the United Kingdom

Trade is essential to the fashion industry because it dictates how garments and textiles are marketed to different locations, namely locations where fashion companies can establish a distribution presence.⁵³ The United Kingdom’s Department of International Trade is responsible for “developing and negotiating free trade agreements and market access deals with non-EU countries.”⁵⁴ However, with respect to countries within the EU, the United Kingdom pre-Brexit operates under a separate system referred to as the “Single Market,” a system largely integrated with the EU’s various trade

49. *Id.* (discussing the establishment of the Hague System).

50. See *How to File Your International Application*, *supra* note 35; see also *Questions on the Registration of International Marks (Madrid Protocol)*, EUIPO, <https://euipo.europa.eu/ohimportal/en/madrid-protocol> (last updated June 27, 2016) (explaining how EUIPO plays a role in this process).

51. *Individual Fees Under the Hague Agreement*, WIPO, <http://www.wipo.int/hague/en/fees/individ-fee.html> (last updated July 2016) (listing individual fees for geographical designations in design registrations); see also *Schedule of Fees*, WIPO, <http://www.wipo.int/hague/en/fees/sched.htm> (last visited Sept. 30, 2017) (listing the schedule of fees for the international registration of designs).

52. *UK Accession to the Hague Agreement for Industrial Designs*, INTELL. PROP. OFF. 9 (2015) (hereinafter *UK Accession to the Hague Agreement*), https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/491584/summary_of_responses_accession_to_the_Hague_Agreement_for_Industrial_Designs.pdf (highlighting the highest users of the Hague System based on growth data calculated from 2013 to 2014).

53. Hildegunn Kyvik Nordås, *The Global Textile and Clothing Industry Post the Agreement on Textiles and Clothing*, WTO 1 (2004), https://www.wto.org/english/res_e/booksp_e/discussion_papers5_e.pdf (explaining the impact of trade on the location and technological advances).

54. See Elisabeth O’Leary, *Britain Appoints New Zealander to Senior Trade Role*, CNBC (June 16, 2017, 5:00 PM), <https://www.cnbc.com/2017/06/16/reuters-america-britain-appoints-new-zealander-to-senior-trade-role.html> (describing the role of the United Kingdom’s chief advisor on trade talks).

sectors.”⁵⁵ Trade integration within the EU itself is generally determined by how much access a country has to the EU’s markets, along with compliance of EU law, and financial contributions.⁵⁶ Pre-Brexit, the United Kingdom had full access to the EU’s Single Market, and was required to abide by EU directives regarding trade, and pay membership fees.⁵⁷ Additionally, the United Kingdom was able to impact the decision-making process for new laws and regulations within the EU’s Single Market because the United Kingdom’s was fully integrated.⁵⁸

Just as countries can adopt international agreements regarding intellectual property through WIPO,⁵⁹ European countries can equally adopt trade procedures through the World Trade Organization (“WTO”), thereby forgoing integration with the EU, altogether.⁶⁰ For goods, member countries of the WTO-only model must apply tariffs to all countries unless a Free Trade Agreement exists; such as in Switzerland.⁶¹ For services, EU member countries follow the WTO General Agreement on Trade in Services, which only allows access to certain overseas markets.⁶² For the fashion industry specifically, the United Kingdom’s full access to the Single Market means that goods, such as textiles and garments, can move freely throughout the EU without tariffs.⁶³ The United Kingdom’s pre-Brexit integration allows for retailers to provide services and establish locations in any member state without restriction.⁶⁴

55. See Luis Gonzalez Garcia, *Brexit: Challenges for the UK in Negotiating an FTA with the EU (a Trade Negotiator’s Perspective)*, MATRIX CHAMBERS (Feb. 8, 2016), <https://www.matrixlaw.co.uk/resource/brexit-challenges-uk-negotiating-fta-eu-trade-negotiators-perspective-luis-gonzalez-garcia/> (outlining the United Kingdom’s trade policy goals with the EU following Brexit, the challenges it faces in reaching those goals, and proposing two options: the single market model or the free market model).

56. See Robyn Munro & Hannah White, *Brexit Brief: Options for the UK’s Future Trade Relationship with the EU*, INST. FOR GOV’T (July 6, 2016), <https://www.instituteforgovernment.org.uk/sites/default/files/publications/Brexit%20Options%20A3%20final.pdf> (charting the United Kingdom’s options for trade relationships with the EU).

57. See *id.*

58. See *id.* (demonstrating that the laws and regulations of the Single Market affect the U.K.).

59. See *How to File Your International Application*, *supra* note 35; *Summary of the Hague Agreement*, *supra* note 48.

60. See *Alternatives to Membership*, *supra* note 14, at 35 (stating that using the WTO rules would provide the “most definitive break with the EU”).

61. See *id.* at 27 (discussing that Switzerland maintains trade agreements with non-European countries because it is outside the Customs Union).

62. Munro & White, *supra* note 56.

63. See *id.* (presuming the United Kingdom still follows common rules and regulations).

64. *Id.*

D. Model Country for Intellectual Property Protection: Switzerland

According to the World Economic Forum, Switzerland currently ranks third in the world for intellectual property protection and first for innovation.⁶⁵ The system through which Switzerland implements its intellectual property laws is distinct because of its centralized management procedures.⁶⁶ The centralized system enables rights holders to readily transfer intellectual property, access and maintain an intellectual property portfolio, and navigate administrative processes.⁶⁷ Moreover, rights holders often have the ability to protect their work within three months of filing an application.⁶⁸

Switzerland has established systems and procedures for both national and international protection of intellectual property that apply to the fashion industry.⁶⁹ With respect to the protection of trademarks and designs, Switzerland, like the EU, is an independent contracting party to the Madrid Protocol and the Hague Agreement.⁷⁰ On a national level, Switzerland offers a comprehensive registration system through the Swiss Federal Institute of Intellectual Property, protecting intellectual property within Swiss borders.⁷¹ Within the EU, Swiss companies are eligible to apply for intellectual property protection even though Switzerland is not a member country.⁷² Swiss registrants must apply through a qualified representative⁷³ domiciled

65. *The Global Competitiveness Report 2015-2016*, WORLD ECON. F. 336-37 (2015), <http://www3.weforum.org/docs/gcr/2015-2016/CHE.pdf> (providing Switzerland's rankings in global competitiveness, including its ranking for innovation at number one).

66. *Switzerland – Your Design and Branding Hub*, SWITZ. GLOBAL ENTERPRISE, <https://www.s-ge.com/sites/default/files/cserver/publication/free/factsheet-design-and-branding-s-ge.pdf> (last visited Oct. 1, 2017) (attributing Switzerland's successful structure to its strong brand recognition, high number of applicants, and data protection).

67. *See id.* (listing the reasons why patent holders would choose Switzerland).

68. *Monitor Your Competition*, SWISS FED. INST. OF INTELL. PROP., <https://www.ige.ch/index.php?id=7960&L=3> (last visited Oct. 1, 2017).

69. *See National or International Protection?*, SWISS FED. INST. OF INTELL. PROP., <https://www.ige.ch/index.php?id=7381&L=3> (last visited Oct. 1, 2017) (describing the intellectual property protection options available to Swiss registrants).

70. *See id.* (elucidating the importance of bilateral trade agreements).

71. *Id.*

72. *See id.* (allowing registrants to apply for protection through EUIPO or the Madrid system).

73. *Representation Before EUIPO*, EUIPO, <https://euipo.europa.eu/ohimportal/en/representation-before-the-office#4.5> (last updated June 27, 2016) (defining a qualified representative of a design registrant outside the EU as a "natural person" who is a national of a EU member state, has a place of business or employment in a EU member state, and who is entitled to represent individuals before a "central property office" within a EU member state).

in the EU and apply directly to the EU Intellectual Property Office.⁷⁴ It is common for designers seeking to expand their brands registration through the Hague System to maintain international protection.⁷⁵ In fact, over the past few years, Switzerland is the country most likely to use the Hague System with an annual average of 3,189 designs filed for application.⁷⁶

Through bilateral agreements, Switzerland currently employs an international trade model that consists of partial integration with the EU.⁷⁷ For purposes of trading goods, Switzerland is a member of the European Free Trade Association, which allows access to certain goods in the EU Single Market through bilateral deals.⁷⁸ For services, Switzerland has adopted a series of bilateral agreements, which provide access to trade in services for some, but not all, industry sectors.⁷⁹ Currently, Switzerland's trade relationship with the EU does not mandate financial contributions; however Switzerland is not represented in the decision-making process of any EU trade laws.⁸⁰ Moreover, Switzerland is only required to abide by EU laws and regulations that govern the trade sectors included in its bilateral agreements with the EU.⁸¹ Notably, Switzerland's trade relationship with the EU is the product of years of lengthy negotiations and legislative enactments.⁸²

The charts below identify the design and trademark systems within which the United Kingdom, EU, and Switzerland are members⁸³:

74. *National or International Protection*, *supra* note 69.

75. *UK Accession to the Hague Agreement for Industrial Designs*, INTELL. PROP. OFF. 10 (Sept. 15, 2015), https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/460790/Consultation_UK_Accession_to_the_Hague_Agreement.pdf (highlighting the highest users of The Hague System based on growth data calculated from 2013 to 2014, and noting that Switzerland ranks second).

76. *See id.* (listing the number of design applications filed through the Hague System by Swiss registrants).

77. *Alternatives to Membership*, *supra* note 14, at 27, 35.

78. *See id.* at 26 (explaining that Switzerland has the "most access to trade in goods" through bilateral agreements that "reduce practical barriers to cross-border trade," and also noting that no agreements pre-Brexit cover access to agricultural goods).

79. *See id.* (noting that Switzerland has "limited access to trade in services," with partial access in professional service sectors such as accountancy, auditing, and legal services, and no "general access" in the banking and finance sectors).

80. Munro & White, *supra* note 56.

81. *Id.*

82. *Alternatives to Membership*, *supra* note 14, at 28-29.

83. Figures 1 and 2 below were created by the author to consolidate the relevant information in an easily understandable format. The sources for the information in the chart are contained in footnote 84. *See infra* note 84.

Figure 1: Membership to International Treaties and Systems ⁸⁴			
	The Hague System for Designs	The Madrid Protocol for Trademarks	European Trademark/Design Systems
United Kingdom	Not a member (Current membership through the EU)	Member	Member (For now, then once Brexit occurs will lose protection within UK borders)
EU	Member	Member	Member
Switzerland	Member	Member	Not a member (Must register through a domiciled representative within EU borders)

84. See WIPO, *Members of the Hague Union*, <http://www.wipo.int/hague/en/members> (last visited Oct. 26, 2017) (listing members of the Hague System); WIPO, *Members of the Madrid Union*, http://www.wipo.int/export/sites/www/treaties/en/documents/pdf/madrid_marks.pdf (last visited Oct. 26, 2017) (listing members of the Madrid Protocol); *IP and BREXIT: The Facts*, GOV.UK, <https://www.gov.uk/government/news/ip-and-brex-it-the-facts> (last visited Oct. 26, 2017). The British government states that EU trade marks will remain valid while the UK is part of the EU, and that the marks will remain valid in the remaining members states once Brexit occurs. *Id.* Implicitly, the British government is stating that its current plan is to withdraw protection for EU trade marks after Brexit occurs. *Id.*; see also *Intellectual Property*, EUROPEAN COMMISSION, http://ec.europa.eu/growth/industry/intellectual-property_en (last visited Oct. 1, 2017).

Figure 2: Price and Coverage Comparison for International, EU, and National Trademark and Design Rights⁸⁵		
	Geographical Coverage	Basic Registration Fee⁸⁶
The Madrid Protocol for Trademarks	98 Country Territories	653 Swiss Francs basic fee (527.55 British Pound)
The Hague System for Designs	66 Country Territories	397 Swiss Francs basic fee (320.73 British Pound)
European Trademark System	28 Member Countries (until Brexit, which would make it 27)	850 Euro basic fee (732.16 British Pound)
European Design System	28 Member Countries	350 Euro basic fee (301.48 British Pound)
United Kingdom National Trademark System	1 Country	170 British Pound basic fee

85. See *supra*, notes 82-83 and accompanying text.

86. “Basic registration fee” means the price to register one design or one trademark. In fashion, it is likely that companies would register more than one of each type, especially designs. Each system provides “bulk” pricing where you can register subsequent designs for a substantially smaller fee than the first.

United Kingdom National Design System	1 Country	50 British Pound basic fee
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III. APPLYING SWISS TRADE AND INTELLECTUAL PROPERTY MODELS TO THE UNITED KINGDOM

After withdrawing from the EU, the United Kingdom will be positioned to implement new intellectual property and trade laws. Given the fashion industry's increasingly important fixture in the British economy, intellectual property and trade systems that benefit fashion companies are likely to be adopted.⁸⁷ To predict the ways in which the United Kingdom can alter its intellectual property and trade structures, Swiss models, as indicated above, should be applied as Switzerland is not a member of the EU, but still maintains a presence in the EU's trade system.⁸⁸

A. *International Intellectual Property Protection: Updated Registration Mechanisms*

Post-Brexit, many intellectual property registrants, including fashion designers, will lose trademark and design protection afforded to them under the EU system.⁸⁹ Going forward, it is possible and prudent to shift the United Kingdom's intellectual property registration mechanisms away from their reliance on EU membership.⁹⁰ Rather than have its citizens register nationally and through the EU systems to achieve EU-wide protection, the United Kingdom could prompt its citizens to register through the WIPO-administered treaty systems for international protection, like Switzerland.⁹¹ Moving to a Swiss system would create issues of domicile, geographical breadth of imports and exports, and new registration procedures for fashion

87. See Gauss et al., *supra* note 12.

88. See *Alternatives to Membership*, *supra* note 14, at 28 (describing the suitability of the Swiss trade model for the United Kingdom).

89. See Jo Joyce, *Less Harmony, More Divergence? Intellectual Property Rights and Enforcement in a Post-Brexit UK*, TAYLOR WESSING (June 2016), <https://united-kingdom.taylorwessing.com/download/article-brexit-intellectual-property.html> (explaining that certain existing registered trademarks and designs will not be valid in the United Kingdom after Brexit because the United Kingdom "would no longer be a party to the [r]egulations creating those rights").

90. See *id.* (highlighting the United Kingdom's "new reliance" upon national protection in the context of intellectual property post-Brexit).

91. *Alternatives to Membership*, *supra* note 14, at 26.

designers.⁹²

In terms of trademark registration, the United Kingdom could maintain its reliance on EUTM application procedures, considering that the United Kingdom would no longer be in the geographical area of the EU, marks would not be protected nationally.⁹³ Additionally, the United Kingdom would likely have to require registrants to apply for EUTM's through a domiciled representative and to also apply through the United Kingdom-specific system for national protection.⁹⁴ Given the fee structure of both systems, registrants would likely have to pay two fees and fill out two separate applications, which may result in lengthier application periods and delayed registration.⁹⁵

Conversely, the United Kingdom could adopt Switzerland's model and shift toward wider geographical protection coverage, urging its citizens to apply through the Madrid Protocol.⁹⁶ Considering that the United Kingdom is already its own individual entity as a contracting party to the Madrid Protocol, this method would ensure that its citizens do not have to consult any EU-based authority for trademark protection.⁹⁷ One central body would examine each application through the United Kingdom and EUTM systems, while applications through the Madrid Protocol would be examined individually by each member country.⁹⁸

Furthermore, for design protection, the United Kingdom could either apply for EU protections through the pre-Brexit EU system or through

92. See Khwaja, *supra* note 11 (listing aspects of the United Kingdom's fashion sector that will be affected by Brexit, including production and supply chains, retail environments, employee eligibility, and intellectual property).

93. See Joyce, *supra* note 89 ("Existing [trademark and design] registrations that have only, or primarily, been used in the UK, could be at risk of revocation for non-use post Brexit, since their owners would not be able to demonstrate use in a substantial part of the EU.").

94. See *id.* (predicting that the United Kingdom's intellectual property office would allow trademark owners to "convert" their EUTMs to national marks upon fee payment).

95. See *id.* (noting that "an important area of concern will be the practical management of their portfolios of registrations," which includes the coordination of applications).

96. See John M. Murphy, *Demystifying the Madrid Protocol*, 2 NW. J. TECH. & INTELL. PROP. 240, 241 (2004) ("[T]he Madrid Agreement and the Madrid Protocol create a centralized filing system which simplifies the process of obtaining and maintaining national trademark registrations in the member countries of the Madrid Union.").

97. See *id.* at 254-56 (listing the United Kingdom as a contracting party to the Madrid Protocol).

98. See *Overseas Trade Mark Protection*, *supra* note 34 (providing general information by virtue of a law firm report on the EUTM and the Madrid Protocol systems as two options for trademark applicants from the United Kingdom pursuing overseas protection).

WIPO, meaning a company would not necessarily have to use the EU system at all. In order to ensure protection within the United Kingdom, registrants would have to apply for protection through the national system because registered designs will no longer be through the EU's system.⁹⁹ On the other hand, unregistered designs may remain unaffected because both the EU and the United Kingdom offer protection to unregistered designs.¹⁰⁰ Alternatively, the United Kingdom could opt for international protection under the Hague System and circumvent the geographical limits of registering only in the EU or the United Kingdom.¹⁰¹ Comparable to the Madrid Protocol, design applications through the Hague System are individually examined and granted or denied protection by each designated country.¹⁰² The United Kingdom could become its own contracting party to the Hague Agreement, allowing its citizens to apply for design protection through the WIPO-administered system.¹⁰³ Further, registrants from the United Kingdom would be able to obtain protection in the EU without utilizing its procedures.¹⁰⁴

99. See Khwaja, *supra* note 11 (recommending that businesses retain national United Kingdom intellectual property rights due to the uncertainty of solely retaining EU-wide intellectual property rights).

100. *Designs in the EU*, *supra* note 41 (explaining the difference between intellectual property protection for registered and unregistered designs within the EU); see also *UK & EU Registered Designs – the Basics*, MEWBURN ELLIS (June 2017), <http://mewburn.com/wp-content/uploads/2017/06/UK-EU-Unregistered-Designs-The-Basics.pdf> (stating that protection of unregistered designs in the United Kingdom exists “automatically upon creation”).

101. See Christopher Benson & Jo Joyce, *UK Set to Accede to the Hague Agreement in 2016*, TAYLOR WESSING (Jan. 28, 2016), <https://united-kingdom.taylorwessing.com/en/uk-set-to-accede-to-the-hague-agreement-in-2016> (noting that the United Kingdom could join the Hague Agreement in its individual capacity and “target their resources more efficiently to those countries where they actually do business,” rather than having to designate the entire EU).

102. See *Frequently Asked Questions: Hague System*, WIPO, <http://www.wipo.int/hague/en/faqs.html> (last visited Oct. 1, 2017) (stating that the “conditions for the grant of protection are provided for in the national/regional legislations” of each designated country in a Hague System design application).

103. See Benson & Joyce, *supra* note 101 (stating that the United Kingdom's government would “restrict the filing of applications through the [Hague] Agreement to direct filings with WIPO” in the event that the country joins the Hague Agreement in an individual capacity).

104. See *id.* (noting that the United Kingdom's government could give intellectual property rights holders the option to obtain protection in the EU solely through WIPO and not any other agency, since the Hague Agreement “enables applicants to register their designs in any contracting state”).

B. Application of the Swiss Model to the United Kingdom's Trade Structure

If the United Kingdom adopts the Swiss model, many aspects of its trade infrastructure would drastically change. The primary difference would be the level of integration between the United Kingdom and the EU, which determines its access to the Single Market.¹⁰⁵ The Swiss model calls for considerably less integration with the EU.¹⁰⁶ Therefore, it is necessary for the United Kingdom to adopt a series of bilateral agreements covering important aspects and sectors of the Single Market.¹⁰⁷ Moreover, to address the trade relationship between the EU and the United Kingdom, the Swiss model would require the United Kingdom to enter into a European Free Trade Agreement (“EFTA”) with the EU.¹⁰⁸ Although the United Kingdom would no longer be represented in the decision-making process of applicable trade laws, it would in turn, not be bound by financially or through general trade directives that the United Kingdom was governed by previously.¹⁰⁹

For goods utilized in fashion, including garments and textiles, the United Kingdom would be able to maintain free trade with the EU if it agreed to a free trade agreement like Switzerland currently has in place.¹¹⁰ If a trade agreement was reached, fashion companies would be able to export their finished products and import materials from the EU member countries.¹¹¹

105. See *Alternatives to Membership*, *supra* note 14, at 11 (stating that “none of the alternative relationships to full EU membership,” including the Swiss model alternative, “offer full access to the Single Market”).

106. See *id.* at 8, 27 (observing that the United Kingdom currently has “special status” in the EU with “full voting rights, a full voice at the table and a full say over the rules of the Single Market,” while Switzerland “Switzerland has no representation in the EU’s institutions and no role in the EU’s legislative processes”).

107. See *Switzerland*, EUROPEAN COMM’N, <http://ec.europa.eu/trade/policy/countries-and-regions/countries/switzerland/> (last updated Feb. 22, 2017) (explaining that Switzerland’s trading relationship with the EU is governed through bilateral deals that cover sectors including commercial services and goods such as “chemicals and medicinal products, machinery, instruments and watches”).

108. See *EFTA at a Glance*, EUROPEAN FREE TRADE ASS’N (Sept. 2016), <http://www.efta.int/sites/default/files/publications/fact-sheets/General-EFTA-fact-sheets/efta-at-a-glance-september-2016.pdf> (describing EFTA’s as providing a legal framework for facilitating trade relations between the EU and EFTA member states, which includes Switzerland).

109. See, e.g., Munro & White, *supra* note 56 (citing that Switzerland is not required to contribute to the EU trading budget outside of the programs it actively participates in and noting that Switzerland is not bound by rulings from the European Court of Justice while pre-Brexit the United Kingdom is).

110. See *id.* (referencing Switzerland’s EFTA membership and agreement with the EU which “allows access to the Single Market in all non-agricultural goods”).

111. Chu, *Brexit: True Cost of UK Leaving EU Without Trade Deal Revealed*, INDEP. (Sept. 23, 2016, 3:31 PM), (“[L]eaving the EU with no free trade deal would mean the UK would also fall out of the coverage of the more than 50 free trade in goods deals the

Additionally, the United Kingdom would have the autonomy to enter into other agreements with non-EU countries.¹¹²

If the United Kingdom adopted the Swiss model, services, such as manufacturing, would be only partially integrated with the EU's Single Market.¹¹³ Rather than the EFTA governing the operation of services in the United Kingdom, the services would be governed by supplemental bilateral agreements with the EU.¹¹⁴ Accordingly, the United Kingdom would have limited access to certain services, analogous to how Switzerland does not presently have access to financial services in the EU.¹¹⁵ By negotiating a bilateral agreement with the EU that covers retail services, the United Kingdom could facilitate the free trade movement of the goods and services with particular attention to its fashion companies throughout multiple countries.¹¹⁶

C. Options for British-Bred Fashion Companies

To further examine the effects that adopting the Swiss models in intellectual property and trade could have on the post-Brexit United Kingdom it is necessary to apply a synthesized hypothetical structure to current fashion companies.

1. The Asos Example

If the United Kingdom adopted the Swiss model, Asos would face unique implications.¹¹⁷ After Brexit, Asos will be able to maintain national intellectual property protection because the company has active trademarks registered with the United Kingdom's Intellectual Property Office.¹¹⁸ With

EU has concluded with other countries including significant markets such as Korea, Switzerland and Mexico.”).

112. See *Alternatives to Membership*, *supra* note 14 at 9, 27 (stating that Switzerland “can conclude its own trade agreements with other parts of the world,” while the United Kingdom may only follow trade agreements and tariff structures of the EU).

113. Munro & White, *supra* note 56 (categorizing Switzerland as being partially integrated with the EU's Single Market in the “access to trade in services”).

114. See *id.* (“Switzerland has supplemented the EFTA agreement with a series of bilateral deals securing access to some other areas of the Single Market.”).

115. See *id.* (stating that Switzerland has established bilateral agreements with the EU that provide “limited access to trade in services, but some sectors – including financial services – are not covered”).

116. See *id.* (describing that companies in the United Kingdom could provide their services to other member states).

117. See generally Chambers, *supra* note 17 (“Asos Plc, Britain's largest online-only fashion retailer, plans to double its U.K. manufacturing as the pound's post-Brexit plunge makes domestic production more affordable.”).

118. See *id.* (identifying Asos as a British fashion retailer).

its secured national trademarks,¹¹⁹ Asos could then apply for international protection for its trademarks through the Madrid Protocol.¹²⁰ In practice, the process for registering its trademarks nationally and through the Madrid Protocol would be almost equal in cost to registering with just the EU System for Trademarks.¹²¹ For protection of designs, Asos's process of obtaining protection would hinge on whether the United Kingdom becomes a contracting party to the Hague System before the Brexit withdrawal is completed.¹²² If the United Kingdom does not become a Hague member before Brexit, Asos would need to apply through both the EU system for international design protection and the national system as well.¹²³ Initially, Asos would be paying high registration fees for its intellectual property through national and WIPO channels, but its rights would likely be protected across a greater number of countries.¹²⁴ With the option for protection in a large number of countries, Asos could better enforce its rights and prevent counterfeiting and infringement occurring beyond just the EU.¹²⁵

Asos's plans to eventually perform all of its manufacturing within the United Kingdom's borders would be greatly impacted by post-Brexit reorganization.¹²⁶ Moving to the Swiss model would allow for free trade in

119. Gauss et al., *supra* note 12 (“[T]rademarks and designs coexist with national registrations that holders make in different European countries, both for trademarks and designs.”).

120. See *How to File Your International Application*, *supra* note 35 (explaining that for an entity to apply for intellectual property protection through the Madrid Protocol, it must “be domiciled, have an industrial or commercial establishment in, or be a citizen of one of the 115 countries covered by the Madrid System’s 99 members”).

121. See Gauss et al., *supra* note 12 (suggesting that fashion designers prefer a wider geographical scope of protection due to cost concerns).

122. Benson & Joyce, *supra* note 101 (“The Intellectual Property Act 2014 anticipated the possibility of the UK joining the Hague Agreement in its own right, providing legal framework for its implementation.”).

123. See *id.* (noting the distinction between the all-encompassing Hague Agreement system and the piecemeal system of registering both with the EU and the United Kingdom separately after Brexit).

124. See *id.* (noting that utilizing WIPO registration channels would assist companies in “target[ing] their resources more efficiently to those countries where they actually do business”).

125. James Whymark, et. al, *IP Enforcement in the Fashion Industry*, WORLD TRADEMARK REV. (2015), <http://www.worldtrademarkreview.com/Intelligence/Anti-counterfeiting/2015> (emphasizing how fashion companies should plan for “future expansion” of their brand and secure protections in as many jurisdictions as possible to avoid infringement from “trademark pirates”).

126. Chambers, *supra* note 17 (“The company [Asos], which sells own-brand fashions alongside wares from the likes of Abercrombie & Fitch Co. and Calvin Klein Inc., will open more plants in Britain over the next three to four years to support its expansion plans . . .”).

the EU through a well-negotiated EFTA, meaning Asos could likely export to neighboring countries easily without the financial burden of tariffs or duties.¹²⁷ Moreover, Asos could freely import textiles from the EU to use in the manufacture of its products.¹²⁸ Considering its business model is primarily online, restrictions imposed on providing services on an international scale would likely not apply to Asos.¹²⁹

2. Zara: Brexit Implications on a Global Fashion Conglomerate

In the United Kingdom's adoption of the Swiss model, Zara, a global retail conglomerate, would face comparatively different implications than Asos.¹³⁰ Unlike Asos, the United Kingdom is only a portion of Zara's retail breadth, and the United Kingdom does not house the majority of Zara's operations.¹³¹ Moreover, Zara pre-Brexit has registered trademarks in the United Kingdom associated with its brand, thus the company would not lose protection post-Brexit.¹³² Since Zara is based in Spain and operates its manufacturing production in countries other than the United Kingdom, it would likely not need to adopt any new intellectual property protection through the Madrid Protocol or the Hague Agreement.¹³³

If the United Kingdom adopts the Swiss model, Zara may face roadblocks in its import and export industries. While Zara's garments and textiles would likely be protected as part of the EFTA, the services industry would not necessarily allow the same flexibility.¹³⁴ Zara's ability to provide services

127. See *Alternatives to Membership*, *supra* note 14, at 26-27 (noting how Switzerland negotiated favorable bilateral and free trade deals in conjunction to being an EFTA state).

128. See Chu, *supra* note 13 (explaining the potential of maintaining a free trade deal between the EU and United Kingdom to avoid high import costs).

129. See Chambers, *supra* note 17 (designating Asos as "Britain's largest online-only fashion retailer").

130. Suzy Hansen, *supra* note 20 ("Inditex [Zara's parent company] now makes 840 million garments a year and has around 5,900 stores in 85 countries, though that number is always changing because Inditex has in recent years opened more than a store a day, or about 500 stores a year.").

131. See *id.* (noting that the corporate headquarters, factories and major distribution center are all located in Arteixo, Spain, and more than half of the company's manufacturing takes place in factories around Europe and North Africa).

132. EU000112755, INTELL. PROP. OFF., <https://trademarks.ipo.gov.uk/ipo-tmcase/page/Results/4/EU000112755> (last visited Jan. 5, 2018).

133. See generally Joyce, *supra* note 89 (suggesting that the effects of Brexit on intellectual property registration will more likely be endured by United Kingdom-based companies).

134. See, e.g., *Alternatives to Membership*, *supra* note 14, at 27 (highlighting Switzerland's limitations on negotiating trade agreements with other countries that adequately address import and export specifications).

within the United Kingdom would be contingent upon the United Kingdom's bilateral agreement with the EU. These bilateral agreements would have to specify the types of services the United Kingdom would be allowed to access.¹³⁵ Further, if British retail services are not allowed access to the EU's Single Market, Zara would be barred from operating retail locations in the United Kingdom.¹³⁶ For Zara to continue doing business in the EU, a bilateral agreement regarding services between the United Kingdom and the EU would need to stipulate that retail services can operate freely among the United Kingdom and EU member countries.¹³⁷ Overall, when Brexit comes to fruition, the use of the Swiss model in the United Kingdom would sufficiently protect intellectual property and trade for the fashion industry.

IV. THE UNITED KINGDOM SHOULD FOLLOW SWISS MODELS IN STRATEGIZING POST-BREXIT INTELLECTUAL PROPERTY AND TRADE APPROACHES

The British fashion industry would benefit from the United Kingdom's adoption of the Swiss model for international trade and intellectual property protection.¹³⁸ Implementing strategies that decrease reliance on the EU would allow the United Kingdom to create a strong independent fashion identity, which may ultimately benefit the nation's culture.¹³⁹ To ensure that fashion designers can safely distribute their products to a larger consumer base, the United Kingdom must sign on to agreements that will afford international intellectual property protection beyond the EU.¹⁴⁰ Moreover,

135. Cf. Munro & White, *supra* note 56 (noting that non-agricultural goods are accessible via Switzerland's status as an EFTA state, however there is limited access to services).

136. See *Alternatives to Membership*, *supra* note 14, at 26 (mentioning that the United Kingdom would have to make bilateral agreements with the EU on access to financial services and possibly other sectors if it adopts the Swiss model).

137. See *id.*

138. See Becky Knott, *Op-Ed: Brexit's Impact on The Fashion Industry Is Not Necessarily a Bad Thing*, FASHION L. (Mar. 24, 2017), <http://www.thefashionlaw.com/home/brexit-impact-on-the-fashion-industry-is-not-necessarily-a-bad-thing>.

139. See *id.* (quoting Prime Minister Theresa May as saying: "British fashion is of huge importance to our country, contributing £28bn to the UK economy and supporting nearly 900,000 jobs . . . From our home grown start-ups to international fashion houses – every business in the industry will play a major role in ensuring we make a success of Brexit. By taking advantage of the opportunities that leaving the EU gives us and playing to our strengths as a great trading nation – we can build a fairer economy that works for all, not just the privileged few.").

140. See *UK Accession to the Hague Agreement*, *supra* note 52, at 3 (Sept. 15, 2015), https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/460790/Consultation_UK_Accession_to_the_Hague_Agreement.pdf (stating that the United Kingdom's use of WIPO-administered registration systems would provide businesses

the United Kingdom's adoption of bilateral agreements with the EU, specifically regarding garments, textiles, and retail services, would ensure that the fashion industry maintains its current trading relationships without the United Kingdom's full integration with the EU's Single Market.¹⁴¹ The United Kingdom should implement portions of the Swiss model for handling issues of international trade and intellectual property registration to ensure the continued success of the fashion industry.¹⁴²

A. Encouraging Intellectual Property Registration Through WIPO

In a post-Brexit climate, the British government should protect its citizens and industries from adverse consequences. Designers could enjoy intellectual property protection within Europe and overseas if the United Kingdom becomes a contracting party to both the Madrid Protocol and the Hague System.¹⁴³ Not only is this method cost-effective,¹⁴⁴ but it also accounts for the unpredictable nature of the fashion industry.¹⁴⁵ For example, by registering Asos's trademarks and designs through WIPO systems, it would ensure that Asos products are protected regardless of what countries it distributes to.¹⁴⁶

Individually examining proposed trademarks and designs under the WIPO systems by each designated member country may be advantageous to fashion companies.¹⁴⁷ First, fashion companies may list the EU as one of the many member "countries" where it would like to obtain protection.¹⁴⁸ Second, if a

with a "simpler, more cost-effective method for managing their rights" on an international scale).

141. See *Alternatives to Membership*, *supra* note 14, at 27 (explaining how the United Kingdom may engage in bilateral agreements with the EU that target specific goods and services).

142. See generally Khwaja, *supra* note 11 ("[F]or the fashion sector, much will turn on the details of the arrangements negotiated for the UK during the two-year exit period before Brexit.").

143. See Joyce, *supra* note 89 (opining that the British government will streamline intellectual property registration in favor of a WIPO-based system).

144. See *Overseas Trade Mark Protection*, *supra* note 34 ("[T]he Madrid Protocol provides a very cost-effective, efficient way to obtain trade mark protection in a range of countries.").

145. See Chambers, *supra* note 17 (illustrating how Asos represents an increasingly web-based fashion industry dynamic and how the company is capitalizing from Brexit's perceived business setbacks).

146. See generally *UK Accession to the Hague Agreement*, *supra* note 52, at 3 (explaining the expansion of intellectual property protection through WIPO-administered systems).

147. See *Overseas Trade Mark Protection*, *supra* note 34 (defining the country-by-country examination process of international intellectual property registration).

148. *The BFC's 'Future of Fashion'*, *supra* note 4 (linking British-made products to

member country rejects a fashion company's trademark or design application, the company could review its consumer presence in that specific country and tailor its business so that it is more widely accessible.¹⁴⁹ Given the fashion industry's reliance on international trends and consumer preference, feedback on applications could serve to enhance a company's business strategy.¹⁵⁰ Increasing the United Kingdom's collaboration with other countries, separate from the EU, would be beneficial to companies looking to bolster their international presence in fashion.¹⁵¹

B. Creating Bilateral Trade Agreements Specifically for Textiles and Garments

Complete disassociation from the EU's Single Market could be detrimental to the United Kingdom because it would require multiple negotiations of bilateral agreements, which could take years.¹⁵² Business and legal professionals in the fashion industry should be proactive in ensuring that designers and companies are not negatively impacted by post-Brexit policies.¹⁵³ Accordingly, the United Kingdom should negotiate bilateral agreements with the EU that secure the free trade of textiles and garments so fashion companies can maintain the same access to goods as it enjoyed prior to Brexit.¹⁵⁴ Further, to allow fashion companies to open or maintain previously established branch locations in neighboring countries of the EU, the United Kingdom should ensure that retail services are also covered by bilateral agreements.¹⁵⁵

By initiating negotiations of bilateral agreements at an early stage of Brexit, the fashion industry's trade considerations could be protected regardless of what model the United Kingdom chooses to follow.¹⁵⁶

a positive consumer response within the U.K.).

149. See generally *Overseas Trade Mark Protection*, *supra* note 34.

150. See Joyce, *supra* note 89 (relaying the benefits of targeting specific countries to register intellectual property in for businesses).

151. See *id.* (noting that the reliance on WIPO-administered registration systems is "likely to be welcomed by overseas companies looking for design protection in the UK market, without wishing to incur the delay or expense of seeking it across the whole European Community").

152. *Alternatives to Membership*, *supra* note 14, at 28–29.

153. See Chu, *supra* note 13 (emphasizing the importance of the EU and the United Kingdom reaching a trade deal in an expeditious manner to avoid costly implications).

154. See generally *id.*

155. See *id.* (emphasizing the importance of clearly designating covered services in any trade deal the United Kingdom makes with the EU after Brexit).

156. Patrick Wintour, *UK Officials Seek Draft Agreements with EU Before Triggering Article 50*, *GUARDIAN* (July 22, 2016), <https://www.theguardian.com/politics/2016/jul/22/brexit-talks-uk-limbo-sequence-negotiations-eu> (addressing how it is critical to

Moreover, bilateral agreements regarding textiles, garments, and retail services may be quicker and easier to negotiate because they would only cover a small portion of the complex trading relationship between the United Kingdom and the EU.¹⁵⁷ Conversely, these agreements may be used as a bargaining chip for bigger trade agreements. In negotiating bilateral agreements for all trading sectors, this strategy does not have the same latitude as the Swiss model, but it nevertheless addresses significant trade concerns within the fashion industry.¹⁵⁸ Regardless, it is important for the British fashion industry to respond swiftly and proactively to the dynamic changes occurring in the United Kingdom.¹⁵⁹

V. CONCLUSION

Brexit will impact the fashion industry in many ways that could incentivize innovation. In establishing updated intellectual property and trade regimes, the United Kingdom can independently create stronger mechanisms for business development. The fashion industry thrives when all artists can fairly enter the marketplace and equally obtain protection. Adopting aspects of Switzerland's approach will sufficiently protect the interests of the fashion industry and allow it to excel in a post-Brexit world.

negotiate Brexit-related agreements at early stages).

157. *See id.*

158. *Alternatives to Membership*, *supra* note 14, at 26 (addressing Switzerland's latitude in trade sectors per bilateral agreements with the EU).

159. *See* Wintour, *supra* note 156 (discussing the many different industry representative who participate in Brexit talks).

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